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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,609	10/29/2003	Wanda J. May	09999-0603--May	6858

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EXAMINER

CONLEY, FREDRICK C

ART UNIT

PAPER NUMBER

3673

DATE MAILED: 12/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/696,609	Applicant(s) MAY, WANDA J.	
	Examiner FREDRICK C. CONLEY	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-19,30 and 31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-19,30 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The indicated allowability of claims 17-19 and 30-31 is withdrawn in view of the newly discovered reference(s) to U.S. Pat. No. 5,946,432 to Ennis et al. and U.S. Pat. No. 6,971,616 to Lake, Rejections based on the newly cited reference(s) follow. The Examiner regrets any inconvenience.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 17 and 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,483,501 to Eddy in view of U.S. Pat. No 5,946,432 to Ennis et al.

Claims 30-31, Eddy discloses a caddy for use with furniture comprising a cushioning object supported by a cushion support structure, said caddy comprising:

a first member 12;

a second member 14 connected to said first member, wherein one of said first and second members are inserted between the cushioning object and the cushion support structure of the furniture so as to define a captured portion of the caddy when inserted between the furniture cushioning object and cushion support structure, wherein the other of said first and second members defines a free portion of the caddy when said captured portion is inserted between the furniture cushioning object and cushion support structure, whereby said free portion is disposed substantially vertically when

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said captured portion is inserted between the furniture cushioning object and cushion support structure;

a receptacle 30 having an open end for releasably receiving at least one item therein; and

means 28 for connecting said receptacle to said free portion whereby a user of the caddy is inherently capable of orienting said open end of said receptacle upwardly regardless of whether said free portion extends upwardly or downwardly with respect to said captured portion. With regards to the receptacle being used to hold sundries, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963). Eddy fails to disclose the releasable connecting means comprising at least one elastic band carried by the receptacle. Ennis discloses a releasable connecting means for a receptacle comprising an elastic band 30 (col. 2 lines 36-45). It would have been obvious for one having ordinary skill in the art at the time of the invention to employ an elastic band as taught by Ennis in order to provide an alternative means to hold the receptacle of Eddy.

Claim 17, wherein Eddy, as modified, discloses all of the Applicant's claimed limitations except for a means 18 for enhancing engagement of the elastic band. Ennis discloses a support having a means 28 for enhancing engagement of an elastic band. It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a means as taught by Ennis in order to receive the elastic band of Eddie.

Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,483,501 to Eddy in view of U.S. Pat. No 5,946,432 to Ennis et al., and further in view of U.S. Pat. No. 6,971,616 to Lake.

Claims 18-19, Eddy, as modified, discloses all of the Claimed limitations except for said means for enhancing engagement of said receptacle to said free portion comprising at least two pairs of corresponding notches provided along opposite edges of said free portion. Lake discloses a support having a means for enhancing engagement of said receptacle to a free portion comprising at least two pairs of corresponding notches 25 provided along opposite edges of said free portion (col. 3-4 lines 64-68 & 1). It would have been obvious for one having ordinary skill in the art at the time of the invention to employ notches as taught by Lake in order to connect the elastic band to the free end of Eddy.

Response to Arguments

Applicant's arguments with respect to claims 17-19 and 30-31 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C. CONLEY whose telephone number is 571-272-7040. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HEATHER SHACKELFORD can be reached on 571-272-7049. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC



Suzanne Dino Barrett
Primary Examiner